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91-1843
No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

JAMES DAVIS NELSON, JR.

PETITIONER/APPELLANT

V.

UNIVERSITY OF ALABAMA SYSTEM, ET AL.

RESPONDANTS/APPELLEES

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

James Davis Nelson, Jr.

Pro Se

321 23rd Street

Tuscaloosa, Alabama 35401

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A FINAL JUDGMENT OF THE SUPREME COURT OF ALABAMA, affirming the erroneous decision of the Circuit Court of Tuscaloosa County, Alabama, on issue of whether male former student of the University of Alabama had his due process rights violated under the 5th and 14th amendments to the U.S. Constitution when the University of Alabama failed to hear any academic grievances because of conspiracy of University of Alabama administrators and professors not following own grievance procedures and therefore, the civil rights of former nursing student were violated under 42 U.S.C §1983, i.e. gender discrimination?

II. WHETHER A FINAL JUDGMENT OF THE SUPREME COURT OF ALABAMA, affirming the erroneous decision of the Circuit Court of Tuscaloosa County, Alabama, in ignoring the substantial evidence in the instant case found in numerous

affidavits [3 affidavits by Nelson, Weiner, Patrick, and Prewitt, all of which are incorporated into this brief - see record below], which is a misinterpretation of the state "substantial evidence rule" [§12-21-12, Code of Alabama, 1975] as seen in Bass v. South Trust Bank Baldwin County, 538 So. 2d 794, (Ala. 1989), i.e. is a local state law on procedure impinging on the due process rights of Mr. Nelson to have his case heard in a trial in the Circuit Court of Tuscaloosa County, Alabama and this misinterpretation of law on substantial evidence and ignoring the actual substantial evidence in the record supported by the affidavits named above and other Exhibits, and therefore, Mr. Nelson's due process rights under the 5th and 14th Amendments to the U.S. Constitition were violated which triggers the 42 U.S.C. § 1983,

III. WHETHER THE SUPREME COURT OF ALABAMA made error when the University of Alabama

failed to show any prima facie evidence showing no genuine issue of material facts exists when the University of Alabama had been on notice after the filing of the first grievance not to lose the final exam of Mr. Nelson, and thus, again Mr. Nelson's due process rights to have a jury trial were impinged upon and thus violating Mr. Nelson's 5th and 14th Amendment rights to the U.S. Constitution?[1]

IV. Whether the Supreme Court of Alabama was in error in not ruling that Mr. Nelson's equal protection rights under the 14th Amendment to the U.S. Constitution were violated when female nursing students at the University of Alabama were allowed to make up exams and the male student nurse [Mr. Nelson] was not allowed to make up any exams, and the University of Alabama lost Mr. Nelson's final exam[2].

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[1] University of Alabama should not have

created records and deleted records after and after the lawsuit produces about 100 pages more of records, and University of Alabama violated own record policies on grievances as well as the University of Alabama did not produce care plans or any evidence of Mr. Nelson's deficiency.

[2]Mr. Nelson did not have any equal access to clinical bed lab. and Ms. Adams, asistant professor, could not grade Mr. Nelson fairly [see Dean Awtry affidavit where Ms. Adams did not evaluate Mr. Nelson according to University policy.

PARTIES TO THE PROCEEDING

James Davis Nelson, Jr., Petitioner
(Appellant and Plaintiff below)

The following parties were named in the original complaint as defendants: The University of Alabama System, and Trustees of the University of Alabama, Chairman, Hon. Governor Guy Hunt, Mr. Thomas Barlett, Former Chancellor, Mr. Sam Earl Hobbs, Interim Chancellor, The University of Alabama, Dr. Joab Thomas, Former President, Dr. Roger Sayers, Interim President, Dr. Douglas Jones, Vice-President Academic Affairs, Dr. Donald Crump, Assistant Vice-President, Mr. Kenneth Goodwin, Office of Counsel, Officially and Individually, Dr. Norma K. Mobley, Former Dean, Capstone College of Nursing, Officially and Individually, Dr. Janey Awtry, Dean, capstone College of Nursing, Ms. Janice Nelson, Course Leader Instructor, Officially and Individually, and Ms. Marsha Adams, Assistant Professor fo Nursing, Officially and Individually.

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties to the Proceeding.....	v
Citations of Authority	vii
Opinions Below	1
Jurisdiction	2
Constitutional Provisions	2
Statement of the Case	2
Statement of the Facts	3
Reasons for Granting the Writ	11
Conclusion	24
Certificate of Service	25
Appendix	a-1

CITATIONS OF AUTHORITY

Page

Austin v. Wilder
215 S.E. 2d 794 (N. Carolina, 1975).. 19

Bass v. South Trust Bank Baldwin County, 538 So. 2d 794 (Ala. 1989) ...3,15

Booth v. United Services Auto Assoc.
469 So. 2d 1281 (Ala. 1985) 21

Bradley v. Pittsburgh Bd. of Educ.
913 F. 2d 1064 (3rd Cir., 1990) ... 21

Buxton v. City of Plant City
871 F. 2d 1037 (11th Cir., 1989) ... 14

Byrd v. Leach
226 So. 2d 866 21

Christensen v. Los Angeles County Bureau of Adoptions, 59 Cal. Reptr. 323 (Court of Appeal, 2nd Dist. 1967) 17

Clemons v. Daugherty County, Georgia
684 F. 2d 1365 (11th Cir., 1982) 14

Davis v. Alabama State University
613 F. Supp. 134 D.C. Ala. 1985 17

Page

Gaines v. Malone

13 So. 2d 870 (Ala. 1943) 18

Ikpeazu v. University of Nebraska

775 F. 2d 250 (8th Cir., 1985) 22

Jackson v. Mowery

743 F. Supp. 600 (N.D. Inc., 1990) 21

Mason v. Board of Educ. School Dist.

741 F. Supp. 879 (U.S. District Court, D. Kansas, 1990) 19

Monroe v. Pape

365 U.S. 167 (1961) 16

Morin v. Cleveland Metropolitan General Hospital School of Nursing, 516 N.E. 2d 1257 (Ohio App. 1986) 15

McGhee v. Mid-State Homes,

504 So. 2d 279 (Ala. 1987) 23

New York State Ass'n for Retarded Children v. carey, 612 F. 2d 644 (1979) 23

Northern Cheyenne Tribe v. Northern Cheyenne, 505 F. 2d 268 (9th Cir., (1974) 16

Owens v. Okure, 57 LW 4075 at 4069 16

Posey v. Posey 545 So. 2d 1329 (Ala. 1989) 22

Pruitt v. Elliott, 460 So. 2d 1275 (Ala. 1984) 20

Seibold v. Daniels 337 F. Supp. 210, (U.S. Dist. Court M.D. Ala., 1972) 16

Southwestern Petroleum Corp. v. Udall 361 F. 2d 650 (10th Cir. 1966) 16

Thomas v. Principal Fin. Group 466 So. 2d 735 (Ala. 1991) 19

West v. Founders Life Assurance Co. of Florida,547 So. 2d 870 (Ala. 1989) .. 15

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JAMES DAVIS NELSON, JR.

PETITIONER/APPELLANT

V.

UNIVERSITY OF ALABAMA SYSTEM, ET AL.

RESPONDANTS/APPELLEES

PETITION FOR WRIT FOR CERTIORARI FROM SUPREME COURT OF ALABAMA

OPINIONS BELOW

The Petitioner/Appellant incorporates all of the statements in the Opinions below, and are stated in the Appendix of this Writ of Certiorari and incorporated as "Opinions below". The opinion of the Supreme Court of Alabama is dated January 24, 1992, and the Rehearing was denied on February 21, 1992, and the opinion is reprinted in the appendix.

JURISDICTION

The Judgment of the Supreme Court of Alabama, of which review and reversal are sought, has jurisdiction under title 28, United States Code, Section 1257 (3).

Constitutional Provisions involved are:

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall... deprive any person of ... property without due process of law..."; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall ... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The instant case is about a former male nursing student at the University of Alabama who was shown no due process after filing

numerous academic grievances and claims were based on 42 U.S.C. § 1983 because of lack of due process, denial of equal protection [gender discriminatin], and conspiracy of administrators not following own policies of academic grievances, and the trial court entered a summary judgment in favor of the defendants, ignoring the voluminous substantial evidence as shown in the affidavits [listed above and in the record], and the Supreme Court of Alabama affirmed not following law as seen in the Bass v. South Trust Bank Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). Writ of Certiorari should be granted, and Merits briefing allowed.

STATEMENT OF THE FACTS

The Petitioner incorporates all the facts below in the briefing to the Supreme Court of Alabama, and found in the affidavits of Mr. Nelson [3 affidavits], Mr. Mark Weiner,

Mr. Patrick, Mr. Prewitt, and other Exhibits and affidavits in the record below and is incorporated in to the facts]. A more detail statement of the facts will be made in the Merits Brief if the Writ of Certiorari is granted.

Mr. James Davis Nelson, Jr., was a male student nurse taking nursing courses in University of Alabama, Nur. 256, and Nur. 214 in the Spring of 1987. Mr. Nelson was a third year University of Alabama student and was permanently suspended by the alleged failing of the clinical part of Nur. 256. [Record below is Vol. II, p. 464].

In Nur. 256, Mr. Nelson had an assistant professor [Vol. II, 462] by name of Ms. Marsha Adams, a female RN nurse, who had a personality conflict with Mr. Nelson, a male student nurse. Mrs. Marsha Adams even fabricated the evaluation written after the fact since dated in 1988 [see Exhibit 13, dated 1/27/88 after

the fact especially the statement that was hearsay, and a fabrication for cover-up]. [Ms. Adams omitted teaching project with 100% --Nelson affidavit]. "During last clinical week, I received a complaint from Jim's client. He stated that he did not want to get Jim in trouble but that he did not know what he was doing"...[Vol.I, p.30, last evaluation], and this said document was clearly omitted by Mr. Goodwin, Attorney. Sept.14,1987, first grievance never was responded to by Ms. Adams, Ms. Janice Nelson, and Dean Mobley.[3]

The University of Alabama never produed the final exam of Nur.256, and claimed the final exam was lost, but University of Alabama never heard any academic grievances filed on administrative level, and all administrative effort was exhaused when Mr. Potts, Office of Counsel, failed to have any hearing and failed to follow University of Alabama policies on grievances, and Mr. Nelson's due process under the 5th and

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[3]Because of constant and continuance of the negligence of University of Alabama to abide by

14th Amendments to U.S. Constitution were violated, triggering 42 U.S.C. §1983 claims. The details of each grievance and mishandling by the University of Alabama will be stated in Merits Brief, if this Writ of Certiorari is granted and details can be found in Statement of Facts in the briefing to Supreme Court of Alabama. Dr. Crump, from Administrative Office of Academic affairs of University of Alabama, tricked Mr. Nelson into his office claiming he was to explain the grievance procedure, but had Mr. Goodwin, an University of Alabama counsel, to question Mr. Nelson without a lawyer about civil matters. See Patrick's affidavit [Vol. III, pp. 765-767]. [See Nelson affidavit p. 19]. [Records below]. Clearly, this questioning by a lawyer, Mr. Nelson, without notice of hearing of any grievance, was a violation of Mr. Nelon's due process. Mr. Goodwin showed decei

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University of Alabama grievance policy, and state policy provided by Commission of Higher Education, Mr. Nelson filed grievances against numerous University of Alabama personnel.

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when sent records claiming all of Mr. Nelson's records, but after lawsuit around 100 more pages.

Mr. Nelson was stigmatized by false documents being created in retaliation of his grievances, expecially the document created by Mr. Marsha Adams quoted above and found in the record [Vol. I, p. 30].

Because of the denial of due process by the University of Alabama, and the conspiracy of shifting which department was responsible for the due process, Mr. Nelson was permanently stigmatized. See Patrick and Wiener affidavits.

There is a disputable fact as to the element of stigmatizing precluding any summary judgment, and the Supreme Court of Alabama made error in not reversing and remanding the instant case based on the enormous subtantial evidence shown in the record of affidavits, exhibits and in the pleadings.

Clearly, the question of how Mr. Nelson failed, is a material issue in the instant case, since the grievances by Mr. Nelson are academic grievances filed according to

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the policies of the University of Alabama but not heard according to the policies of the University of Alabama, clearly showing no due process by the University of Alabama. At least there was a question as to whether there was a material disputable fact as to due process, and due process issue was allowed in the instant case [Vol. I, 195-196], and this Writ of Certiorari should be granted.

The University of Alabama[4] has failed to show the same equality in the Nursing School to Mr. Nelson, a male student nurse, as was extended to female nursing students who completed courses, and the female nursing students were allowed to make up deficiencies [p. 20, Janice Nelson deposition, lines 3-8, and p. 26 lines 3-19]. The University of Alabama in the nursing school failed to treat the males and female students the same under similar circumstances.

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[4]At no time and in no way nor form did the University of Alabama tell Mr. Nelson his grievances were not academic grievances.

Mr. Nelson, a male student nurse, was not allowed to make-up his final exam, and/or clinical part of Nur. 256, and Mr. Nelson was not allowed to take the NLN exam when he was unable at the time to take the exam, when two female nurses were allowed to make up deficiencies in the nursing school. This is clearly gender discrimination showed by the University of Alabama, and a violation of the equal protection under the law and the 14th Amendment to the U.S. Constitution, triggering the 42 U.S.C. §1983 claim. Mr. Nelson was not allowed the use of bed lab. Ms. Adams claimed Mr. Nelson tore up charts when he did not, and allowed Mr. Nelson to write nursing charts in clinical.

Clearly, the University of Alabama was acting under a common scheme and design conspiracy to do nothing when the University of Alabama kept shifing Mr. Nelson back and forth concerning his academic grievances filed at the University of Alabama when Mr. Nelson filed his grievances

according to policies of the University of Alabama, but the University of Alabama ignored own policies and ignored the Buckley amendment [Vol. IV., pp. 846-847, and p. 828, and exhibits sent with record].

The University of Alabama with all its agents who are defendants in this lawsuit as amended, have acted in concert, with common scheme and design in conspiracy to not provide due process for Mr. Nelson's grievances filed in the University of Alabama. The overt act and in this instant, overt non-act, of doing nothing to provide due process by the professors, dean, and academic administration of the University of Alabama have clearly violated the civil rights of Mr. Nelson under 42 U.S.C. § 1983 and stigmatized Mr. Nelson permanently in ever attending any university, and this Writ for Certiorari should be granted, and a Merits Brief allowed so that all the pertient facts may be presented with the law in argument.

REASONS FOR GRANTING THE WRIT

The first three Questions Presented above are concerned with "due process", and will be discussed together with due process law.

See Petitt v. Penn, 180 So. 2d 66, (LA, 1966) which defines "due process of law",

"Due process of law" means that no person shall be deprived of life, liberty, property or any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing." The University of Alabama had no hearing for the academic grievances filed by Mr. Nelson, and Mr. Nelson exhausted his academic remedies by finally seeing Mr. Potts, Office of Counsel, and Mr. Potts failed to have any hearing of Mr. Nelson's grievances thus, the University of Alabama clearly violated Mr. Nelson's right to due process of

law concerning his alleged failing of Nur. 256, when the University of Alabama lost his final Exam, and Ms. Adams not evaluationg Mr. Nelson by University of Alabama policy. See Van Sickle v. Boyes, 797 P. 2d 1267, Colo. 1990, which states,

"Administrative body has duty under due process clauses of State and Federal Constitution to be fundamentally fair in the resolution of a legal dispute between and individual and a governmental entity where the individual is threatened with deprivation of a significant property interest."

Also see Board of Regents v. Roth, 408 U.S. 564, 33 L. Ed 2d 548, 92 S. Ct 2701.

The University of Alabama is a state school and certain was acting under color of state law when no due process was given Mr. Nelson for his academic grievances. See Mathis v. Parks, 741 F. Supp. 567, E.D.N.C. 1990, which states,

"To prevail in civil rights action brought under § 1983, plaintiff must establish that defendants deprived him of rights secured by Constitution or laws of United States and that deprivation was committed by person acting under color of state law. 42 U.S.C. § 1983."

The Honorable judge of the lower trial court made reversible error because his denial of the summary judgment was due to alleged no substantial evidence, when the instant case had enormous substantial evidence as seen in the record and pointed out in the briefing to the Supreme Court of Alabama, and was also pointed out to the Honorable Judge of the lower court in the Motion to Alter, Amend... the judgment, which is in the record below.

The point is the University of Alabama has clearly violated Mr. Nelson's due process rights by showing no due process of academic grievances which have been pending for four (4) years.

The violation of Mr. Nelson's due process under the 5th and 14th Amendments to U.S. Constitution triggers the violation of civil rights under 42 U.S.C. § 1983.

See Clemons v. Daugherty County, Georgia, 684 F.2d 1365 (11th Cir. 1982), which precludes summary jdugment when the element of stigmatizin is at issue. Clearly, Mr. Nelson has been stigma tized in University of Alabama record when he has been suspended with an F in Nur. 256 and University of Alabama cannot find the final examp which is necessary document to prove any grade. Also, see Buxton v. City of Plant City, Fla. 871 F. 2d 1037, (11th Cir. 1989).

The point is that the keeping of stigmatizing false evaluation records that were fabricated after the fact [Vol. I, p. 30], in Mr. Nelson's student files is publication since a public school, especially since no due process has been shown to Mr. Nelson, and clearly the re-

cord shows that Mr. Nelson was not given due process at the University of Alabama, and at least this issue of due process is disputable which would make the order on summary judgment error as a matter of law.

Further, there is a question whether the courts interpretation or misinterpretation of the "substantial evidence rule"]§12-21-12, Code of Alabama, 1975] as seen in the Bass v. South Trust Bank Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989), and West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989) is impinging on Mr. Nelson's constitutional rights of due process in the courts.

See Morin v. Cleveland Metropolitan General Hospital school of Nursing, 516 N.E. 2d 1257 (Ohio App. 1986), which held that a student may not be dismissed arbitrarily by University without due process of law. Therefore, this Writ of Certiorari should be granted.

The Federal courts have said that under the Fifth Amendment to United States Constitution rights incident to ownership cannot

be divested by actions of the United States without due process of law. Northern Cheyenne Tribe v. Northern Cheyenne, 505 F. 2d 268, (9th Cir. 1974). Also see Southwestern Petroleum Corp. v. Udall, 361 F. 2d 650 (10th Cir. 1966).

See Seibold v. Daniels, 337 F. Supp. 210 (U.S, Dist. Court, M.D. Ala., 1972), held,

"A state statute cannot be construed to obviate a constitutional requirement."

See Owens v. Okure, 57 LW 4065 at 4069 which states,

"...Civil Rights Acts provided: "[a] unique remedy making it appropriate to accord the statute a 'a sweep as broad as its language'. Because the § 1983 remedy is one that can "override certain kinds of state law,", Monroe v. Pape, 365 U.S. 167, 173 (1961), and is in all events, supplementary to any remedy any State might have."... Emphasis added.

See Susan "M" v. New York Law School, 544 N.Y.S. 2d 829 (A.D.1 Dept., 1989), which states,

"If school exercises, its discretion to dismiss student for academic reasons in arbitrary or irrational fashion, the courts will intervene." (Emphasis added.)

See Davis v. Alabama State University, 613 F. Supp. 134, D.C. Ala. 1985, which held that essence of due process is notice and opportunity for hearing appropriate to nature of case.

In answer to the #4 Questions presented, in particular concerning equal protection of the law under the 14th Amendment to the U.S. Constitution, see Christensen v. Los Angeles County Bureau of Adoptions, 59 Cal. Reptr. 323, (Court of Appeal, Second District, 1967), which held that "Equal protection" clause of Federal Constitution requires that persons under like circumstances be given equal protection in the enjoyment of personal rights

and the prevention and redress of wrongs.

Christensen case further states,

"The "equality" guaranteed by the equal protection clause of the Federal Constitution is equality under the same conditions and among persons similarly situated."

University of Alabama has failed to show the same equality in the Nursing School to Mr. Nelson as extended to female nursing students allowed to make up exams and courses as stated above and not being treated the same and not having equal use of bed lab.

By the conspiracy of agents of the University listed as defendants in the instant case, Mr. Nelson has been permanently stigmatized in ever attending any university. See Gaines v. Malone, So. 2d 870 (Ala. 1943), which states, "A conspiracy" is a combination of two or more persons by concerted action to acomplish an unlawful purpose or to accomplish some purpose not in itself unlawful by unlawful means."

As to determining what facts are material, see Johnson v. Soulis, 512 P. 2d 867, (Wyoming, 1975) and Austin v. Wilder, 215 S.E. 2d 794 (N. Carolina, 1975).

See Thomas v. Principal Fin. Group, 566 So. 2d 735, (Ala. 1991), which defines substantial evidence "of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved."

See Bradley v. Pittsburgh Bd. of Education, 913 F. 2d 1064, [U.S. Court of Appeals, 3rd Cir., 1990], which held,

"Party has been denied full and fair opportunity to litigate only when state procedures fall below minimum requirements of due process as defined by federal law U.S.C.A. Const. Amend. 14."

See Mason v. Board of Educ. School Dist. no. 209, 741 F. Supp. 879, [U.S. District Court, D. Kansas, 1990], which held,

"Whether property interest has been conferred is generally question of state law, while what minimum procedural requirements must be followwed before that interest is adversely affected is question of constitutional law. U.S.C.A. Const. Amends. 5,14,"

The Supreme Court of Alabama has failed to follow on law on the elements of summary judgment because the Plaintiff/Petitioner has clearly shown that there are disputed material facts which meet the substantial evidence rule [§12-21-12, Code of Alabama, 1975], which is supposed to be read in connection with Rule 56, Alabama Rules of Civil Procedure. However, in the instant case the state highest court has misinterpreted the facts which are substantial facts, and the highest court of the state has failed to rule according to own law on summary judgment.

See Pruitt v. Elliott, 460 So. 2d 1275, (Ala.

1984), and Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985).

See Jackson v. Mowery, 743 F. Supp. 600, (N.D.Inc., 1990), which held,

"Pro se motions and complaints are held to less stringent pleading requirements; rigor in examination of such motions and complaints is inappropriate."

The lower trial court clearly made reversible error in granting summary judgment because of enormous substantial evidence. Then, the Supreme Court of Alabama made reversible error by not following own law on summary judgment. See law on summary judgment presented in this Writ of Certiorari in the Booth case, and also see Byrd v. Leach, 226 So. 2d 866, which held,

"Burden of proving absence of material facts so that no genuine issue is left for jury determination is on movant for summary judgment,

and if evidence by affidavits, deposition or otherwise demonstrates the existence of a genuine issue summary judgment should be denied."

Also see Posey v. Posey, 545 So. 2d 1329 (Ala. 1989).

The instant case should have been decided by a jury because of the enormous substantial evidence which the trial court and the Supreme Court of Alabama failed to notice in the record. See Ikpeazu v. University of Nebraska, 775 F. 2d 250,253 (8th Cir. 1985), which held "In cases involving academic dismisal educational institutuions have the right to receive summary judgment unless there is evidence from which a jury could conclude that there was no rational basis for the decision or that it was motivated by bad faith or ill will unrelated to academic performance." In the instant case, Ms. Adams had a personality conflict with the male nursing student, Mr. Nelson, and even created false evaluation after the fact as quoted above. Clearly, this instant case should have been before a jury,

and it is reversible error to have granted a summary judgment. The Supreme Court of Alabama failed to follow own law on summary judgment by afirming the instant case. This Writ of Certiorari should be granted, and the merits brief allowed to be written.

See New York State Ass'n for Retarded Children v. Carey, 612 F. 2d 644 (1979), which held, "In reviewing factual determinations of state and local administrative agencies, courts have the sensitive task to insure that established legal standards, both constitutional and statutory, are followed by the agencies."

There is clearly a factualy material issue concerning due process rights under the 5th and 14th Amendments to the U.S. Constitutuion. See McGhee v. Mid-State Homes, 504 So. 2d 279 (Ala. 1987), which held

"Where there were factual issues to be determined, summary judgment was improper."

CONCLUSION

The Writ for Certiorari should be granted as stated above, and the Merits Brief allowed to be written so that this Honorable Court can rule on the merits of this instant case in which the due process of Mr. Nelson has been violated by the University of Alabama, and the Supreme Court of Alabama has not ruled according to its own law on summary judgment.

The instant case should be reversed and remanded to the lower trial court for trial by jury on the issues of due process, equal protection under the law, and conspiracy and other issues listed in the Amended Complaint.

Because there are disputable substantial facts as to due process [no due process by University of Alabama], equal protection under the law, conspiracy, and fabrication

of records, and lack of records such as non-production of final exam since University of Alabama claimed lost Mr. Nelson's final exam, and any one of these issues with material facts as described above is a reason to grant this Writ of Certiorari, i.e. University of Alabama deleted and created records.

Respectively submitted,

James Davis Nelson, Jr.

Pro Se

321 23rd Street

Tuscaloosa, Alabama 35401

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Writ of Certiorari was sent to Mr. George Gordon, Office of Counsel, The University of Alabama, P.O. Box 870106, Tuscaloosa, Alabama 35487 this 15 day of May 1992.

James Davis Nelson Jr.

APPENDIX A

SUPREME COURT OF ALABAMA

October Term, 1991-92

(Case no.)1901633

James Davis Nelson, Jr.

v.

University of Alabama System, et al.

Appeal from Tuscaloosa Circuit Court,

(CV-89-409)

SHORES, JUSTICE.

A former nursing student, James Davis Nelson, Jr., filed this action against the University of Alabama and seversl of its faculty members and administrators on April 26, 1989.[1] His suit sought monetary damages, reinstatement

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[1] The plaintiff's complaint lists as defendants: "The University of Alabama System, Trustees of the University of Alabama System, and Trustees of the University of Alabama, Chairman, Hon. Governor Guy Hunt, Mr. Thomas Bar[t]lett, Former Chancellor, Mr. Sam Earl

in the University, and damages basec on 42 U.S.C. § 1983 claims of denial of due process, denial of equal protection (gender discrimination), and conspiracy. The trial judge entered a summary judgment in favor of the defendants. Nelson Appealed. We affirm.

The record reflects that James Davis Nelson, Jr. entered the University in the

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Hobbs, Interim Chancellor, The University of Alabama, Dr. Joab Thomas, Former President, Dr. Roger Sayers, Interim President, Dr. Douglas Jones, Vice President Academic Affairs, Dr. Donald Crump, Assistant Vice-President, Mr. Kenneth Goodwin, Office of Counsel, Officially and Indivisually, Dr. Norma K. Mobley, Former Dean, capstone College of Nursing, Officially and Individually, Dr. Janet Awtry, Dean, Capstone College of Nursing, Ms. Janice Nelson, Course Leader Instructor, Officially and Individually, and Ms. Marsha Adams, Assistant Professor of Nursing, Officially and Individually."

fall of 1986 semester to pursue a course in nursing. Because of poor grades, he was placed on indefinite academic suspension at the end of the fall semester. However, the University waived his suspension and allowed him to enroll in the nursing courses for the 1987 spring semester. He enrolled in the courses--Nursing 214, "Medication Calculations"; and Nursing 256, "Nursing Process." At issue in his performance in Nursing 256, a course that requires the student to obtain a satisfactory evaluation in the clinical part of the course and to sit for the National League of Nursing Achievement Test. As a consequence of his poor academic performance during the spring semester, he was again placed upon indefinite academic suspension.

Following this supension, Nelson complained to Dean Mobley and Associate Dean Awtrey that the reason for his failure was incompetence on the part of his professors. They advised

him that he could file an academic grievance under the University academic grievance procedure. On September 14, 1987, Nelson met with Dean Mobley and gave her a written complaint in which he asked that the University fire two professors. However, Nelson did not submit a written academic grievance about his grades until December 9, 1987. The record reflects that a series of meetings and discovery procedures followed. During this period, Nelson made repeated demands for a delay in the grievance procedure. Nelson filed this action on April 26, 1989.

The court heard motions for summary judgment by both the plaintiff and the defendants. The judge entered a summary judgment for the defendants, stating in his order:

"This cause came to be heard on February 19, 1991, on plaintiff's motion for summary judgment and defendant's motion for summary judgment. After reviewing all evidence

submitted and arguments and briefs of counsel, this court finds that although there are disputed facts, there is no evidence of disputed material facts. Defendants have presented substantial evidence rebutting plaintiff's claims, and the plaintiff has presented no substantial evidence in support of his claims of denial of due process, denial of equal protection (gender discrimination), and civil conspiracy. Therefore all defendants are entitled to a summary judgment as to all claims as a matter of law, and it is ordered that summary judgment be granted in favor of all defendants as to all of plaintiff's claims. In so ordering, this court is making no ruling as to the merits of plaintiff's grievances, which have been filed against various officials of the University of Alabama, since those matters are not before this court, and are not ripe for review by a Circuit Court. Those grievances are

still pending, and the parties are encouraged to resolve those grievances promptly without further delay.

"Costs of this action are taxed to the plaintiff for which let execution issue.

"Ordered this 21st day of February, 1991."

The issue before us is whether the trial court erred in entering the summary judgment for the defendants. Rule 56, A. R. Civ. P., sets forth a two-tiered standard for determining whether to enter a summary judgment. In order to enter a summary judgment, the trial court must determine: 1) that there is no genuine issue of material fact, and 2) that the moving party is entitled to a judgment as a matter of law. In determining whether a summary judgment was properly entered, the reviewing court must view the evidence in a light most favorable to the nonmovant. See Turner v. Systems Fuel, Inc., 475 So. 2d 539, 541 (Ala. 1985); Ryan v. Charles

Townsend Ford, Inc., 409 So. 2d 784 (Ala. 1981). Rule 56 is read in conjunction with the "substantial evidence rule" (§12-21-12 Code 1975), for actions filed after June 11, 1987. See Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). In order to defeat a properly supported motion for summary judgment, the plaintiff must present "substantial evidence," i.e., "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).

We have carefully examined the record in this case and conclude that the judgment of the trail court should be affirmed. The record in this case is lengthy, running to five volumes; yet there is much

extraneous matter and the trial court correctly concluded that although there a disputed material facts.

Nelson first contends that the defendar denied him due process and discriminated against him because of his gender. There is simply no evidence to substantiate thi claim. In fact, the evidence reflects tha Nelson himself requested that the academi grievance procedures be halted, and he no claims the halt to be a denial of due pro cess to him.

Nelson further claims that the defendar conspired to deny him a hearing on his academic grievances. He presented no evidence to support this claim. A civil conspiracy requires a combination of two or more individuals to accomplish an unlawful purpose or to accomplish a lawful end by unlawful means. Barber v. Stephen son, 260 Ala. 151, 69 So.2d 251 (1953);

Edison v. Olin Corp., 527.2d 1283, 1285 (Ala. 1988). While it appears that Nelson's contention is that University officials conspired to shift his grievances among themselves and thus to deny him due process, the record reflects that any shifting of Nelson's own actions. He has thus failed to show a wrong committed upon which a claim of civil conspiracy could be based.

On a motion for summary judgment, when the movant makes a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law, as in the present case, the burden shifts to the nonmovant to show "substantial evidence" in support of his position. Bean v. Craig, 557 So.2d 1249, 1252 (Ala. 1990). The record reflects that, as to each claim, Nelson failed to produce substantial evidence to establish a genuine issue of material fact. A summary judgment motion

is not defeated by conclusory allegations or speculation that fact issues exist, and bare argument or conjecture will not satisfy the nonmoving party's burden to offer facts to defeat the motion. Williams v. Palmer, 277 Ala. 188, 168 So. 2d 220 (1964); Riggs v. Bell, 564 So 2d 882, 884 (Ala. 1990). Therefore, the judgment of the trial court is due to be affirmed.

AFFIRMED.

Hornsby, C. J., and Maddox, Houston, and Kennedy, JJ., concur.

APPENDIX B

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY

JAMES DAVIS NELSON, JR.

PLAINTIFF

V.

UNIVERSITY OF ALABAMA SYSTEMS, ET AL.

DEFENDANTS

1901633

Application for rehearing overruled. No opinion written on rehearing.

Shores, J. - Hornsby, CJ., Maddox, Houston and Kennedy, JJ., concuc.

2/21/92

s/ Robert G. Esdale

Robert G. Esdale, Clerk

Supreme Court of Alabama

APPENDIX C

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY

JAMES DAVIS NELSON, JR.

PLAINTIFF

V.

UNIVERSITY OF ALABAMA SYSTEMS, ET AL.

DEFENDANTS

CASE NO. CV 89 409

ORDER

"This cause came to be heard on February 19, 1991, on plaintiff's motion for summary judgment and defendant's motion for summary judgment. After reviewing all evidence

submitted and arguments and briefs of counsel, this court finds that although there are disputed facts, there is no evidence of disputed material facts. Defendants have presented substantial evidence rebutting plaintiff's claims, and the plaintiff has presented no substantial evidence in support of his claims of denial of due process, denial of equal protection (gender discrimination), and civil conspiracy. Therefore all defendants are entitled to a summary judgment as to all claims as a matter of law, and it is ordered that summary judgment be granted in favor of all defendants as to all of plaintiff's claims. In so ordering, this court is making no ruling as to the merits of plaintiff's grievances, which have been filed against various officials of the University of Alabama, since those matters are not before this court, and are not ripe for review by a Circuit Court. Those grievances are

still pending, and the parties are encouraged to resolve those grievances promptly without further delay.

"Costs of this action are taxed to the plaintiff for which let execution issue.

"Ordered this 21st day of February, 1991."

s/s Thomas S. Wilson

Circuit Judge

(2)

No. 91-1843

Supreme Court, U.S.
FILED
JUN 17 1992
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

JAMES DAVIS NELSON, JR.,
Petitioner,

v.

UNIVERSITY OF ALABAMA SYSTEM, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

---

BRIEF OF RESPONDENTS IN OPPOSITION

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

I. Is summary judgment properly entered under Rule 56 of the Alabama Rules of Civil Procedure subject to challenge in federal court as a deprivation of due process, where respondents conclusively demonstrated that there are no genuine issues of material fact to be tried, and petitioner, after discovery, has failed to produce any evidence indicating that genuine issues of material fact do exist?

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties listed in the caption and in the petition for writ of certiorari, Dr. James G. Taafe is a party. Mr. Winton Blount, Mr. Sam Earl Hobbs, Dr. Joab L. Thomas, Dr. Thomas Bartlett, and Dr. Douglas Jones, who were defendants-appellees in the proceedings below, no longer hold offices as officials, and therefore are not parties in this Court. See Sup. Ct. R. 35.3.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
STATEMENT OF THE CASE	2
A. Facts	2
1. Proceedings Below	2
2. The Events Leading to Petitioner's Lawsuit	3
B. What This Case Is Not About	8
1. It Is Not About Non-Academic Grievances	8
2. It Is Not About The Merits of Petitioner's Academic Grievances	9
C. This Case Is About Summary Judgment	9
D. Questions Raised Below	11
REASONS FOR THE DENYING WRIT	11
I. SUMMARY JUDGMENT DOES NOT DENY ONE'S RIGHT TO A JURY TRIAL	11
II. THE DECISION BELOW IS CORRECT	12
III. THIS CASE IS NOT IMPORTANT AND PRESENTS NO SUBSTANTIAL FEDERAL ISSUES	14
CONCLUSION	15

TABLE OF AUTHORITIES

CASES	Page
Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)	13
Celotex Corp. v. Catrett, 477 U.S. 317 (1986)	13
Fidelity & Deposit Co. of Maryland v. United States to Use of Smoot, 187 U.S. 315 (1902)	12
Goodman v. Lukens Steel Co., 482 U.S. 656 (1987)	14
Hammond v. Auburn University, 669 F. Supp. 1555 (M.D. Ala. 1987), *aff'd*, 858 F.2d 744 (11th Cir. 1988), *cert. denied*, 106 S. Ct. 1134 (1989)	13
Hightower & Co. v. United States Fidelity and Guar. Co., 527 So. 2d 698 (Ala. 1988)	11
Lujan v. National Wildlife Fed'n, 110 S. Ct. 3177 (1990)	13
Poller v. Columbia Broadcasting Sys., Inc., 368 U.S. 464 (1962)	12, 15
Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70 (1955)	15
Rogers v. Missouri Pac. R.R., 352 U.S. 500 (1957)	14

MISCELLANEOUS	
Ala. R. Civ. P. 56	9
Ala. R. Civ. P. 56(c)	12
Ala. R. Civ. P. 56(e)	12
Ala. R. Civ. P. 59.1	3, 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-1843

JAMES DAVIS NELSON, JR.,
Petitioner,

v.

UNIVERSITY OF ALABAMA SYSTEM, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

---

BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Alabama is reported as *Nelson v. University of Alabama Sys.*, 594 So. 2d 632 (Ala. 1992). A copy of this opinion appears in the appendix to this brief because portions of the text are omitted from the opinion reproduced in the petition. Brief in Opposition [hereinafter "Opp. Br."] at 1a, *Nelson v. University of Alabama Sys.*, 594 So. 2d 632 (Ala. 1992) (No. 91-1873).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The petition was timely filed.

STATEMENT OF THE CASE

A. The Facts:

1. *Proceedings Below.*

Petitioner filed suit on April 26, 1989, alleging constitutional claims as well as claims of fraud, deceit, libel, slander, and "academic fraud."

On May 25, 1989, respondents filed a motion to dismiss raising a variety of defenses, including sovereign immunity, qualified immunity, and estoppel. At the motion hearing on July 27, 1989, the trial court granted a continuance to permit petitioner to amend his complaint. Petitioner filed an amended complaint on September 1, 1989.

Respondents' motion to dismiss was argued November 8, 1989. On December 28, 1989, the trial court dismissed all but three counts of the amended complaint which alleged 42 U.S.C. § 1983 claims of denial of procedural due process, equal protection, and conspiracy. As to these remaining claims the court also dismissed many of the named respondents.[1] Opp. Br. at 6a.

Following almost ten months of discovery, respondents on October 31, 1990, filed a motion for summary judgment, which was supported by several affidavits. The motion was set for hearing on December 7, 1990. Before the hearing date, petitioner noticed three depositions and obtained a continuance of the summary judgment hearing.

On January 11, 1991, petitioner moved for summary judgment. The trial court heard arguments on both summary judgment motions on February 19, 1991, and subsequently entered summary judgment in favor of all respondents on all claims on February 21, 1991.

On March 18, 1991, petitioner filed with the trial court a motion to alter, amend, or vacate the summary judg-

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[1] On appeal to the Alabama Supreme Court, petitioner did not challenge the trial court's ruling on respondents' motion to dismiss.

ment which was set for hearing on April 10, 1991. When the trial court did not issue a ruling within ninety days after the hearing, the motion was denied procedurally. Ala. R. Civ. P. 59.1.

Thereafter, petitioner pursued an appeal to the Supreme Court of Alabama. On January 24, 1992, the Alabama Supreme Court affirmed the trial court's judgment, and on February 21, 1992, denied his request for rehearing.[2]

2. *The Events Leading To Petitioner's Lawsuit.*

In the 1986 fall semester, the University admitted petitioner to pursue a course of study in the Capstone College of Nursing. At the conclusion of the 1986 fall semester, petitioner was placed on indefinite academic suspension from the University. With the assistance of Dean Mobley, the University waived petitioner's suspension and allowed him to enroll in nursing courses for the 1987 spring semester. In the 1987 spring semester, petitioner enrolled in two courses: Nursing 214—"Medication Calculations" and Nursing 256—"Nursing Process."

Nursing 256 is a clinical course. It has a theoretical phase and a clinical phase. The theoretical phase consists of lectures concerning the subject matter of the course. The clinical phase has two parts. In the first part, students practice nursing skills in a simulated environment. In the second part, students gain real-life nursing experiences from working in hospitals or other patient care facilities. In order to pass Nursing 256, a student must obtain a passing grade, which is based on tests and papers, in the theoretical part of the course, must obtain a satisfactory evaluation in the clinical part of the course, and must sit for the National League of Nursing Achievement Test ("NLN test"). Petitioner

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[2] Petitioner was represented by counsel throughout all lower court proceedings.

failed Nursing 256 because he received an unsatisfactory clinical evaluation, and he did not sit for the NLN test.

As a consequence of his poor academic performance in the 1987 spring semester, petitioner was placed again on indefinite academic suspension.

Following the end of the semester in May, 1987, petitioner for the first time began to voice complaints about his instructor in Nursing 256. His complaints alleged incompetency on the part of his instructor, Professor Adams, rather than some impropriety relating to his grade in Nursing 256. After talking with Dean Mobley and Associate Dean Awtrey, petitioner was advised by each of them that if he was displeased with his grade in Nursing 256, he could file an academic grievance under the University-Wide Academic Grievance Procedures.

The University-Wide Academic Grievance Procedures is a process by which a student can request a multi-level, non-judicial review of an academic action that adversely affects the student's course grade. The review process begins with attempts to mediate the grievance through informal conferences in the academic department where the academic action occurred and ends with a more formal appeal hearing before a panel consisting of University administrators, a faculty member, and a student. At the conferences and hearings the student has a right to representation. Under this procedure, because the Nursing College is not divided into academic departments, the dean of the College handles the initial stages of the grievance. If the grievance is not resolved at the dean's level, then the Office for Academic Affairs becomes involved.

An academic grievance is a complaint about an action which directly affects the grade that a student received on a test or in a course. A grievable academic action may involve a mathematical error in computing a student's grade, a change in the course requirements, or other such similar matters. Academic grievances do not encompass

student complaints about conduct of faculty members or administrators that are unrelated to grades or course requirements.

On September 14, 1987, petitioner met with Dean Mobley and gave to her a written complaint. In this complaint petitioner asked the University to fire Assistant Professors Nelson and Adams for alleged criminal acts, collusion, lack of professionalism, and mental cruelty. Although petitioner asked for reinstatement in the University, he did not complain that he had been unfairly graded in Nursing 256. The matters alleged by petitioner were not academic grievances; however, since Dean Mobley knew that he had received a failing grade in Nursing 256, she gave him a copy of the University-Wide Academic Grievance Procedures.

Subsequently, petitioner spoke with Dr. Sayers, Vice President for Academic Affairs, about his complaints against his professors. Dr. Sayers told petitioner that the only option available to him would be to contest his grade in Nursing 256 by filing an academic grievance, which would be handled initially by Dean Mobley.

After several meetings with petitioner, Dean Mobley sent him a letter on December 7, 1987. In her letter she recounted their previous meetings and reminded him of their discussions about the academic grievance procedures. She explained to him that until she received a written academic grievance about his Nursing 256 grade, there could be no hearing. She also suggested that he could contact Dr. Buttram, Director of Student Services, for assistance in drafting an academic grievance. Clerk's Record [hereinafter "CR."] at 581-82.

On December 9, 1987, petitioner submitted to Dean Mobley academic grievances against Associate Dean Awtrey and Assistant Professors Nelson and Adams. Dean Mobley then promptly initiated the procedures outlined in the University-Wide Academic Grievance Procedures.

Also in accordance with the procedural guidelines, Dean Mobley met with petitioner in January, 1988, to discuss the procedures for processing his academic grievances. At this conference petitioner explained to her that he had asked several non-University agencies to conduct investigations and that he wanted to receive a response from these external agencies before continuing with the academic grievance procedures. Based on petitioner's request, Dean Mobley agreed to delay the grievance procedures until he contacted her. Deposition of James Davis Nelson (2/7/90) [hereinafter "Nelson Dep."] at 57-59.

Shortly thereafter, Dean Mobley, fearing that petitioner's delay request might indefinitely postpone the proceedings and hopeful that the informal conferences provided for in the procedures might resolve the matter or narrow the issues involved, reconsidered her decision to grant his request for a delay. CR. at 584-85. On February 2, 1988, Dean Mobley sent petitioner a letter explaining her decision to move ahead with the grievance procedures. She then resumed the academic grievance procedures by scheduling informal conferences between petitioner and the individuals who were named in his academic grievances. On February 2, 1988, she notified him of the dates for these informal conferences. CR. at 630-35.

Approximately three weeks later, petitioner filed complaints against Dean Mobley, one of which was based upon her resumption of the academic grievance procedures. Along with these complaints, petitioner again asked for a delay in the academic grievance procedures and demanded Dean Mobley's recusal from the academic grievance procedures. Nelson Dep. at 63-65, Def. Exs. 4, 5.

As a result of petitioner's complaints and demands, Dean Mobley recused herself and notified petitioner that the informal conferences were canceled and that the Office

of Academic Affairs would contact him about his academic grievances.

A few days later, Dr. Donald Crump, Assistant Academic Vice President in the Office of Academic Affairs, contacted petitioner and scheduled a meeting with petitioner for February 29, 1988, to discuss the handling of his academic grievances.

The meeting on February 29, 1988, was attended by Dr. Crump, Kenneth L. Goodwin, petitioner, and several of petitioner's friends. Mr. Goodwin attended the meeting at Dr. Crump's request and was introduced by Dr. Crump as one of the University's attorneys. During the meeting Mr. Goodwin and Dr. Crump asked petitioner several questions to determine how he wanted his academic grievances handled in view of Dean Mobley's removal from the academic grievance procedures. CR. at 547-49.

During this meeting petitioner asked for a third time that the University delay any further action on his academic grievances until he had heard from the non-University agencies that were allegedly conducting investigations at his request. Petitioner said that when he heard from these agencies, he would contact Dr. Crump to discuss resumption of the academic grievance procedures. Dr. Crump granted petitioner's request for an indefinite delay in the academic grievance procedures. CR. at 548-59; Nelson Dep. at 36-37.

Shortly thereafter, petitioner filed numerous non-academic complaints unrelated to his Nursing 256 grade against Dr. Crump, Mr. Goodwin, Academic Vice President Sayers, University President Thomas, Chancellor Bartlett, and Governor Guy Hunt. Along with these complaints, petitioner continued to demand that the University take no further action on his academic grievances until the conclusion of the investigations by the external

agencies.[3] Nelson Dep. at 105-08, 112-18, Def. Exs. 9, 10, 11, 12.

From the time petitioner initially submitted his academic grievances on December 9, 1987, until the filing of his lawsuit on April 26, 1989, petitioner never contacted Dr. Crump to request a resumption of the academic grievance procedures. Nelson Dep. at 113. In accordance with petitioner's demands, Dr. Crump never recommenced the grievance procedures.

B. What This Case Is Not About.

1. *The Case Is Not About Non-Academic Grievances.*

This case does not concern petitioner's non-academic complaints against his instructors and other University officials.

Petitioner filed multiple non-academic grievances against Dean Mobley, Assistant Academic Vice President Crump, and a host of other University officials.[4] Although petitioner had a right to complain about non-academic matters, he had no right to a hearing on them, and offered no evidence to the contrary.

Since petitioner has no right to a hearing on non-academic complaints, he has not suffered a denial of due process, and the absence of a hearing on his non-academic complaints is not probative of his academic grievance due process claim. Further, petitioner abandoned any claims concerning his non-academic complaints when he admitted to the Alabama Supreme Court in his reply brief that his appeal did not concern non-academic grievances.

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[3] At his deposition on February 7, 1990, petitioner acknowledged that he still had not received a reply from the outside agencies.

[4] These non-academic grievances alleged such matters as "unprofessionality with respect to using an adjective in which she could not and would not define." Nelson Dep., Def. Ex. 6.

2. *The Case Is Not About The Merits of Petitioner's Academic Grievances.*

The merits of petitioner's academic grievance are not before this Court. The petition contains numerous statements about the loss of petitioner's final examination,[5] the alleged conflicts with his instructors, and the alleged fabricated documents. Petitioner says the lower courts ignored these matters and therefore erred in granting respondents' summary judgment.

Petitioner's contention is preposterous. The trial court's summary judgment order clearly indicated that it was "making no ruling as to the merits of plaintiff's grievances . . . since those matters are not before this court, and are not ripe for review by a Circuit Court." Petition for Writ of Certiorari [hereinafter "Pet."] at a-12, *Nelson v. University of Alabama Sys.*, 594 So. 2d 632 (Ala. 1992) (No. 91-1873).

C. This Case Is About Summary Judgment.

This case concerns whether the trial court properly entered summary judgment in accordance with the standards in Rule 56 of the Alabama Rules of Civil Procedure. Petitioner argues not only in the courts below but also to this Court that he presented substantial evidence that was sufficient to preclude summary judgment in the respondents' favor; however, the record shows otherwise.

It is uncontradicted that the lack of a hearing on the academic grievances was due solely to petitioner's repeated requests for an indefinite halt to the due process proceedings. Nowhere in any of the evidence does petitioner ever deny that he asked for delays in the hearings. The courts below correctly concluded that there was no basis for his academic grievance due process claim.

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[5] Petitioner claims his September 14, 1987 non-academic grievance notified the University not to lose his final examination. However, that complaint does not reference either his final examination or his grades. CR. at 598-601.

Petitioner also argues here and below that there are material facts which support his equal protection claim. Petitioner again points to no specific facts which would show that there is an issue for trial.

Respondents' undisputed evidence showed that the students with whom petitioner compared himself to support his equal protection claim were not similarly situated. For example, petitioner alleges that unlike a female student, he was not permitted to make-up the NLN test. The record shows that to make-up a test, a student must receive prior permission from the instructor. CR. at 663. The female student who was allowed to take the NLN test on a make-up date had requested permission to take the test at another time prior to the scheduled test date. Deposition of Janice Nelson (11/27/90) at 38-39. Prior to the NLN test date, petitioner did not contact any of his instructors to request permission to miss the test and take it on another date. CR. at 663-64, 690. Petitioner offered no evidence that female students who waited until after the NLN test date to request a make-up date were allowed to take the test on another date.

As another example, petitioner, who was academically suspended at the end of the 1987 spring semester, asserts he was denied the same opportunity as two female students to repeat a failed course. Yet, respondents' uncontroverted evidence shows that the two female students who were allowed to repeat Nursing 214 in the 1987 summer term were in good standing academically at the University at the end of the 1987 spring term. CR. at 895-97. Petitioner produced no evidence that female students who were academically suspended at the end of the 1987 spring term were permitted to repeat a course during the summer semester.

Petitioner's conspiracy claim fails because he offered no material facts establishing his academic grievance due process and equal protection claims. Therefore, summary judgment on this count was correct.

D. Questions Raised Below.

In his motion to vacate, alter or amend the summary judgment which was filed with the trial court, petitioner raised the issue that the trial court had failed to consider evidence which would have precluded summary judgment. CR. at 985, 1012. After hearing this motion, the court declined to rule, and after ninety days the motion was denied procedurally. Ala. R. Civ. P. 59.1. On appeal to the Supreme Court of Alabama, petitioner raised the same question. Appellant's Opening Brief at 16-17, *Nelson v. University of Alabama Sys.* (No. 1901633). The Alabama Supreme Court affirmed the trial court's entry of summary judgment for the respondents.[6]

In the text of his application and brief for rehearing to the Alabama Supreme Court petitioner for the first time claims that the erroneous entry of summary judgment constituted a deprivation of due process. Appellant's Application for Rehearing and Rehearing Brief at 4, 57, *Nelson v. University of Alabama Sys.* (No. 1901633). The application for rehearing was denied without opinion. Pet. at a-10-11.

REASONS FOR DENYING THE WRIT

Petitioner alleges that the entry of summary judgment against him constitutes a denial of his right to a jury trial. Petitioner further asserts that the lower courts ignored evidence which establishes genuine issues for trial. Petitioner's contentions are unfounded in law and in fact.

I. SUMMARY JUDGMENT DOES NOT DENY ONE'S RIGHT TO A JURY TRIAL.

Summary judgment is a proper method for disposing of a case in which a trial is unnecessary, but only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In one sense, the purpose of summary judgment is to decide

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[6] Review of summary judgment on appeal is *de novo. Hightower & Co. v. United States Fidelity and Guar. Co.*, 527 So. 2d 698 (Ala. 1988).

whether the non-moving party has a right to a jury trial. When petitioner failed to establish the existence of any genuine issues of material fact, a trial was unneeded.

Courts should exercise caution to avoid denying a non-moving party a jury trial where disputed material facts exist. But when a court is convinced that there are no controverted material facts, then the court's entry of judgment against the non-moving party is proper and is not a denial of that party's right to a jury trial. *See, e.g., Fidelity & Deposit Co. of Maryland v. United States to Use of Smoot*, 187 U.S. 315 (1902); *Poller v. Columbia Broadcasting Sys., Inc.*, 368 U.S. 464 (1962).

II. THE DECISION BELOW IS CORRECT.

The lower court correctly applied the summary judgment standard outlined in Rule 56(c) of the Alabama Rules of Civil Procedure. After respondents made a prima facie showing that there were no disputed material facts and that they were entitled to judgment as a matter of law, the burden of production shifted to petitioner to establish genuine issues of material fact. Ala. R. Civ. P. 56(e). Petitioner failed to carry this burden.

Petitioner does not here or in the courts below articulate any specific material facts that would preclude summary judgment. As he did below, petitioner urges consideration of the extensive extraneous evidence relating to his non-academic grievances and the merits of his academic grievances as proof of the disputed material facts supporting his claims, and points to nothing else. The courts below properly found this evidence immaterial and inadequate to preclude summary judgment.

Standards for granting summary judgment are well settled. When the moving party makes a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law, then in order to defeat the entry of summary judgment the non-moving party must produce evidence to establish

the existence of material facts. *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). *Hammond v. Auburn University*, 669 F. Supp. 1555 (M.D. Ala. 1987), *aff'd* 858 F.2d 744 (11th Cir. 1988), *cert. denied*, 106 S. Ct. 1134 (1989).

Petitioner has utterly failed to produce any evidence which would preclude summary judgment. Respondents' evidence of the initiation of the academic grievance procedures, of petitioner's numerous requests for indefinite delays in those procedures, of petitioner's many complaints against every University official involved in the academic grievance process, and of the lack of similarity between petitioner and other students who repeated courses or tests stands uncontroverted by petitioner. Petitioner has produced no evidence that he was entitled to a hearing on his non-academic grievances, that he requested the University to resume the academic grievance procedures, or that any University official acted in any way, individually or in concert with others, to deny petitioner a hearing when he was rightfully entitled to one. Petitioner's allegations and conclusory statements to the contrary are powerless to preclude summary judgment. *See Lujan v. National Wildlife Fed'n*, 110 S. Ct. 3177 (1990).

The decisions below also were fair. In December, 1987 petitioner availed himself of the opportunity to contest a failing grade by initiating an academic grievance. When he requested delays in that procedure, the University accommodated his wishes even though it was not required to do so. Since the petitioner, not the University, sought and obtained a cessation of the due process mechanism, he cannot now legitimately and in good faith complain of unfair treatment. The lower courts' decisions confirm that petitioner was justly treated.

III. THIS CASE IS NOT IMPORTANT AND PRESENTS NO SUBSTANTIAL FEDERAL ISSUES.

Petitioner asks this Court to review the factual findings of the lower courts, but in doing so he does not direct this Court's attention to specific facts which establish a genuine issue of material fact. Rather, petitioner urges this Court to sift through the entire record on the chance it may discover a disputed material fact which two other courts could not find.

A petition that merely asks for review of the sufficiency of the evidence ignores this Court's proper function. As Justice Frankfurter has admonished:

> [T]he court in these four cases has merely reviewed evidence that has already been reviewed by two lower courts, and doing so it ignores our strictures to the bar that 'We do not grant a certiorari to review evidence and discuss specific facts.' (citations omitted).

Rogers v. Missouri Pac. R. R., 352 U.S. 500, 537 (1957) (Frankfurter, J., dissenting).

The courts below thoroughly reviewed the record in this case. In the absence of obvious or exceptional errors, this Court should refrain from reviewing the factual findings of the lower courts. *See Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987).

This case does not present an important federal issue that justifies review by this Court. The facts of the case are unique to the parties involved, and the legal issues have no broad public importance. The lower courts' application of the legal standards for summary judgment is consistent with the decisions of other state courts of last resort and U.S. courts of appeals. The summary judgment cases cited by petitioner confirm that the law is well settled. When a case will not resolve an unsettled area of the law or address substantial or far-reaching constitutional issues, certiorari should be denied. *See*

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70 (1955).

CONCLUSION

The petition offers no compelling reasons for review by this Court. No substantial constitutional issues are presented by the petition and the decisions by the lower courts were correct.

In support of their summary judgment motion respondents demonstrated that there were no issues for trial and that they were entitled to judgment. When petitioner did not produce the quantum of evidence necessary to establish disputed issues of material fact supporting his claims, then the lower courts correctly concluded that petitioner had no right to a trial on his allegations. Justice Harlan has expressed the same sentiment:

> [P]etitioner . . . was able to produce no evidence to support his charges . . . . He should not be permitted to proceed to trial just on the hope that in the more formal atmosphere of the courtroom witnesses will revise their testimony or that a clever trial tactic will produce helpful evidence. Courts do not exist to afford opportunities for such litigating gambles. (citations omitted).

Poller v. Columbia Broadcasting Sys., Inc., 368 U.S. 464, 468-69 (1962) (Harlan, J., dissenting).

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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June 1992

APPENDIX

APPENDIX

SUPREME COURT OF ALABAMA

OCTOBER TERM, 1991-92

1901633

JAMES DAVIS NELSON, JR.

v.

UNIVERSITY OF ALABAMA SYSTEM, *et al.*

Appeal from Tuscaloosa Circuit Court
(CV-89-409)

SHORES, JUSTICE.

A former nursing student, James Davis Nelson, Jr., filed this action against the University of Alabama and several of its faculty members and administrators on April 26, 1989.[1] His suit sought monetary damages, reinstatement in the University, and damages based on 42

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[1] The plaintiff's complaint lists as defendants: "The University of Alabama System, Trustees of the University of Alabama System, and Trustees of the University of Alabama, Chairman, Hon. Governor Guy Hunt, Mr. Thomas Bar[t]lett, Former Chancellor, Mr. Sam Earl Hobbs, Interim Chancellor, The University of Alabama, Dr. Joab Thomas, Former President, Dr. Roger Sayers, Interim President, Dr. Douglas Jones, Vice-President Academic Affairs, Dr. Donald Crump, Assistant Vice-President, Mr. Kenneth Goodwin, Office of Counsel, Officially and Individually, Dr. Norma K. Mobley, Former Dean, Capstone College of Nursing, Officially and Individually, Dr. Janet Awtry, Dean, Capstone College of Nursing, Ms. Janice Nelson, Course Leader Instructor, Officially and Individually, and Ms. Marsha Adams, Assistant Professor of Nursing, Officially and Individually."

U.S.C. § 1983 claims of denial of due process, denial of equal protection (gender discrimination), and conspiracy. The trial judge entered a summary judgment in favor of the defendants. Nelson appealed. We affirm.

The record reflects that James Davis Nelson, Jr., entered the University in the fall 1986 semester to pursue a course in nursing. Because of poor grades, he was placed on indefinite academic suspension at the end of the fall semester. However, the University waived his suspension and allowed him to enroll in nursing courses for the 1987 spring semester. He enrolled in two courses—Nursing 214, "Medication Calculations"; and Nursing 256, "Nursing Process." At issue is his performance in Nursing 256, a course that requires the student to obtain a satisfactory evaluation in the clinical part of the course and to sit for the National League of Nursing Achievement Test. As a consequence of his poor academic performance during the spring semester, he was again placed upon indefinite academic suspension.

Following this suspension, Nelson complained to Dean Mobley and Associate Dean Awtrey that the reason for his failure was incompetence on the part of his professors. They advised him that he could file an academic grievance under the University academic grievance procedure. On September 14, 1987, Nelson met with Dean Mobley and gave her a written complaint in which he asked that the University fire two professors. However, Nelson did not submit a written academic grievance about his grades until December 9, 1987. The record reflects that a series of meetings and discovery procedures followed. During this period, Nelson made repeated demands for a delay in the grievance procedure. Nelson filed this action on April 26, 1989.

The court heard motions for summary judgments by both the plaintiff and the defendants. The judge entered a summary judgment for the defendants, stating in his order:

"This cause came to be heard on February 19, 1991, on plaintiff's motion for summary judgment and defendant's motion for summary judgment. After reviewing all evidence submitted and arguments and briefs of counsel, this court finds that although there are disputed facts, there is no evidence of disputed material facts. Defendants have presented substantial evidence rebutting plaintiff's claims, and the plaintiff has presented no substantial evidence in support of his claims of denial of due process, denial of equal protection (gender discrimination), and civil conspiracy. Therefore all defendants are entitled to a summary judgment as to all claims as a matter of law, and it is ordered that summary judgment be granted in favor of all defendants as to all of plaintiff's claims. In so ordering, this court is making no ruling as to the merits of plaintiff's grievances, which have been filed against various officials of the University of Alabama, since those matters are not before this court, and are not ripe for review by a Circuit Court. Those grievances are still pending, and the parties are encouraged to resolve those grievances promptly without further delay.

"Costs of this action are taxed to the plaintiff for which let execution issue.

"Ordered this 21st day of February, 1991."

The issue before us is whether the trial court erred in entering the summary judgment for the defendants. Rule 56, A. R. Civ. P., sets forth a two-tiered standard for determining whether to enter a summary judgment. In order to enter a summary judgment, the trial court must determine: 1) that there is no genuine issue of material fact, and 2) that the moving party is entitled to a judgment as a matter of law. In determining whether a summary judgment was properly entered, the reviewing court must view the evidence in a light most favorable to the nonmovant. See *Turner v. Systems Fuel, Inc.*, 475

So.2d 539, 541 (Ala. 1985); *Ryan v. Charles Townsend Ford, Inc.*, 409 So.2d 784 (Ala. 1981). Rule 56 is read in conjunction with the "substantial evidence rule" (§ 12-21-12, Code 1975), for actions filed after June 11, 1987. See *Bass v. SouthTrust Bank of Baldwin County*, 538 So.2d 794, 797-98 (Ala. 1989). In order to defeat a properly supported motion for summary judgment, the plaintiff must present "substantial evidence," i.e., "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." *West v. Founders Life Assurance Co. of Florida*, 547 So.2d 870, 871 (Ala. 1989).

We have carefully examined the record in this case and conclude that the judgment of the trial court should be affirmed. The record in this case is lengthy, running to five volumes; yet there is much extraneous matter and the trial court correctly concluded that although there are disputed facts, there is no evidence of disputed *material* facts.

Nelson first contends that the defendants denied him due process and discriminated against him because of his gender. There is simply no evidence to substantiate this claim. In fact, the evidence reflects that Nelson himself requested that the academic grievance procedures be halted, and he now claims the halt to be a denial of due process to him.

Nelson further claims that the defendants conspired to deny him a hearing on his academic grievances. He presented no evidence to support this claim. A civil conspiracy requires a combination of two or more individuals to accomplish an unlawful purpose or to accomplish a lawful end by unlawful means. *Barber v. Stephenson*, 260 Ala. 151, 69 So.2d 251 (1953); *Eidson v. Olin Corp.*, 527 So.2d 1283, 1285 (Ala. 1988). While it appears that Nelson's contention is that University officials conspired to shift his grievances among themselves and thus to deny

him due process, the record reflects that any shifting of Nelson's academic grievances was due to Nelson's own actions. He has thus failed to show a wrong committed upon which a claim of civil conspiracy could be based.

On a motion for summary judgment, when the movant makes a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law, as in the present case, the burden shifts to the nonmovant to show "substantial evidence" in support of his position. *Bean v. Craig*, 557 So.2d 1249, 1252 (Ala. 1990). The record reflects that, as to each claim, Nelson failed to produce substantial evidence to establish a genuine issue of material fact. A summary judgment motion is not defeated by conclusory allegations or speculation that fact issues exist, and bare argument or conjecture will not satisfy the nonmoving party's burden to offer facts to defeat the motion. *Williams v. Palmer*, 277 Ala. 18, 168 So.2d 220 (1964); *Riggs v. Bell*, 564 So.2d 882, 884 (Ala. 1990). Therefore, the judgment of the trial court is due to be affirmed.

AFFIRMED.

Hornsby, C. J., and Maddox, Houston, and Kennedy, JJ., concur.

IN THE CIRCUIT COURT
FOR TUSCALOOSA COUNTY, ALABAMA

Civil Action No. CV89-409

JAMES DAVIS NELSON, JR.,
Plaintiff

vs

THE UNIVERSITY OF ALABAMA SYSTEM, *et al.*,
Defendants

NOTICE OF RULING

The defendant's motion to dismiss being argued orally on November 8, 1989 and briefs of counsel being considered it is hereby ordered as to each count separately:

COUNT I: Motion to Dismiss for failure to state a claim granted in favor of all defendants on fraud claim.

COUNT II: Motion To Dismiss for failure to state claim is granted in favor of all defendants.

COUNT III: Motion To Dismiss for failure to state claim is hereby granted as to all defendants.

COUNT IV: Motion To Dismiss for failure to state a claim is hereby granted as to all defendants.

COUNT V: Motion To Dismiss for failure to state a claim is hereby granted as to all defendants.

COUNT VI: Motion To Dismiss for failure to state a claim denied as to defendants Dr. Donald Crump, Kenneth Goodwin, Dr. Norman Mobley, Dr. Janet Awtry, Mrs. Janice Nelson, and Ms. Marsha Adams, and granted as to all other defendants.

COUNT VII: Motion To Dismiss for failure to state a claim denied as to defendants, University of Alabama, Norma Mobley, Dr. Douglas Jones, Kenneth Goodwin, Dr. Janet Awtry, Janice Nelson, Donald Crump, and Marsha Adams, and granted as to all other defendants.

COUNT VIII: Motion To Dismiss denied as to defendants, University of Alabama, Dr. Norma Mobley, Dr. Janet Awtry, Mrs. Janice Nelson, and Mrs. Marsha Adams and granted as to all other defendants.

This 28th day of December, 1989.

/s/ Thomas S. Wilson
Circuit Judge

Distribution:

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Attorneys: Julia Asam
George B. Gordon/Stanley J. Murphy

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No. 91-1843

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

JAMES DAVIS NELSON, JR.

PETITIONER/APPELLANT

V.

UNIVERSITY OF ALABAMA SYSTEM, ET AL.

RESPONDANTS/APPELLEES

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

REPLY BRIEF OF PETITIONER

James Davis Nelson, Jr.

Pro Se

321 23rd Street

Tuscaloosa, Alabama 35401

TABLE OF CONTENTS

Page

Citations of Authority ii

Reply-Reasons for Granting the Writ 1

Certificate of Service..... 20

CITATIONS OF AUTHORITY

Page

Board of Dental Examiners v. King
364 So. 2d 319 (Ala. Civ. App. 1978).... 10

Bobal v. Rensselaer Polytechnic Institute
916 F2d 759 (2d Cir. 1990)..... 2

Busky v. Town of Hanover
577 A2d. 406 (N.H. 1990)..... 9

Equal Employment Opportunity Commission v. Louisville & N.R. Co.
368F.Supp. 633 reversed 505 F.2d 610, rehearing denied 508 F.2d 842, certiorari denied 96 S.Ct. 39, 423 U.S. 824, 46 L.Ed. 2d 41, (D.C. Ala.1974)..... 7

Equal Employment Opportunity Commission v. U.S. Pipe and Foundry Co.
375F.Supp. 237 (D.C.Ala. 1974)..... 7

Long v. Seabrook
197 S.E. 2d 659 (S.C. 1973)..... 3

People v. Reyes
155 Ill. Dec. 757, 569 N.E.2d. 1368 (Dis.2,1991)..... 7

Page

State, Dept. of Mental Health v.Allen

Ind. App., 427 N.E.2d (4th Dis. 1981) 3

Woods v. Covington County Bank

537 F.2d 804 (5th Cir. 1976)..... 7

UNITED STATES SUPREME COURT RULES

U.S.S.C.R. 5..... 4

U.S.S.C.R. 8..... 4

U.S.S.C.R.9.2..... 3

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REPLY-REASONS FOR GRANTING THE WRIT FOR CERTIORARI

The Petitioner/Appellant incorporates all of his Writ of Certiorari into this Reply Brief.

The Respondants Affidavits and Briefs were willfully written in bad faith, a sham, nugatory and numberous reasons for Disbarment Orders for Attorneys Skidmore and Gordon. See the overwhelming Substantial Material Facts in Petitioners Affidavits (notice November 8,1989 Affidavitt can not be found in Clerks Record (hereafter CR.)

not be found in Clerks Record (hereafter CR.) CR. 827-852,992-1010,1029-1095 (note Affidavitt CR. 827-852 Exhibits (hereafter Ex.) are not to CR., but are in large Brown Folder), Mark Wiener Affidavitt Ex.2, Richrard Prewitt CR.768-774, Author Patricks CR. 765-767, A.G. Tramell, President AFL-CIO, Alabama CR.1087).

See, Woods v. Covington County Bank, 537 F 2d 804, states,

"Requirement that a lawyer avoid even the appearance of impropriety reflects the bar concern that some conduct which is in fact ethical may appear to the layman as unethical and thereby could erode public confidence in the judicial system or the legal profession; similarly conscious of the need to keep both the public and private segments of the profession above suspicion, courts have disqualified attorneys under the appearance of evil doctrine even though the record was free of any evidence of actual wrong-doing."

See, Bobal v. Rensselaer polytechnic Institute, 916 F2d 759 (2d Cir. 1990),states,

"Pro-Se papers are to be held to be held to

less stringent standards than formal pleadings drafted by lawyers.

Pro Se litigant should be afforded every reasonable opportunity to demonstrate that he has a valid claim. id."

State, Dept. of Mental Health v. Allen,Ind. App., 427 N.E.2d 2,4th Dist 1981, states,

" A person's duties in performance of an act after he has determined whether or not it should be done are ministerial, and for neglience of such performance he may be held liable."

Long v. Seabrook, 197 S.E.2d 659(S.C.1973),

"Failure of public official to comply with laws governing and regulating his powers and duties may give rise to liability.

Before recovery can be had in tort suit against public officals whose duties are discretionary, it must be shown that in performance or nonperformance of such duties, offical was guilty of corruption, or bad faith, or influenced by malicious motives. id."

UNITED STATES SUPREME COURT RULES (USSCR) violations,9.2,Skidmore not record attorney

in lower court and willfully neglected to enter a seperate notice of appearance. The Attorneys have exhibited conduct unbecoming of a member of the Bar (USSCR 8). Attorney Skidmore is a Witness, with Willfull, Malicious, Outrageous, Involvement in the Conspiracy of tampering with Physical Evidence, Withholding Records,Deleting Records, Altering Records, Dening Petitioners Due Process Rights, Defying Federal Statuates, Federal Regulations, Criminal Codes, Inducing Petioner into Self Incrimination, Not Conforming to University Regulations and Attorney Skidmore did Willfully, Malicious DEFY GOVERNOR HUNTS ORDERS to get Mr. Nelson his Records (Property),and to Process Mr. Nelsons Grievances.

Petitioner has numberous Academic Grievances againest The Universitys Office of Counsel for Defying Federal Statuates and Regulations. Responants Attorneys have willfully not conducted themselves uprightly, intentionally Violating (SSSCR. Rule 5)

Respondants' Attorneys have constantly and consistantly, willfully, maliciously through out Respondants Brief (hereafter R.Brief), LIED! R.Brief p.4, LIE through creating a Unttruthful definition," An Academic Grievance is a complaint about an action which directly affects the grade that a student recieved on a test or in a course." "... Academic Grievances do not encompass student complaints about conduct of faculty members or administrators that are unrelated to grades or course requirements. This is A LIE whereas Petitioner presented in Affidavits, Exhibits, (see CR.831-833) the University of Alabama Faculty Handbook page 60,last sentence (Ex38b), " the Academic Grievance policy describes the process to be followed by students who believe they have been treated unfairly. (see Ex.3), University Wide Academic Grievance Procedures, I.A.[... Examples of academic grievances include, but are not limited to, allegations of unfairness in grading, alleged violation of a written or oral agreement with a student...

and alleged inconsistant applications of existing policies.

For a protest of a final course grade or other final comprehensive evaluations to be considered, the protest must be based upon one or more grounds and upon allegation that the ground or grounds cited influenced the grade assignment to the students determent:

1. Arithmetic or clerical error. 2. Arbitrariness, possibly including discrimination based upon race, sex, religion or national origin of the student. 3. Personal Malice (see Ex.1,6,15,24,28,) (see CR. 1076, lines 24-26) Dean Awtrey documented that she told Mr. Nelson that if he thought he had been treated unfairly he could file an Academic Grievances. (see CR. 833)

The FACT is not until Respondants Affidavits , Attorneys Gordon and Skidmores' Brief have the ever told Petitioner that the Academic Grievances he filed weren't Academic Grievances whereas their Writings are a Sham Lie, written in Bad Faith, Intentionally !

(see CR.831-833). The Fact is the University Wide Grievance Procedure is so Vague it does not muster Constitional Validity, where as Petitioner filed Academic Grievances against the desiners and editors of the University Wide Grievance Procedure, because of it's Vagueness.

See Equal Employment Opportunity Commission v. U.S. Pipe & Foundry Co., 375 F. Supp.237 (D.C. Ala. 1974),states

" Agency which confers benifit by its regualations to party in proceeding before it may not capriciously deprive party of that benifit.

SeePeople v. Reyes, 155 Ill. Dec. 757, 569 N.E.2d. 1368 (Ill. App. 2Dist. 1991),

"Statute is unconstitutionaly vague and Violative of due process if its meaning cannot be readily ascertained by individual of ordinary intelligence.

See Equal Employment Opportunity Commission v. Louisville & N.R. Co., 368 F. Supp. 633 reversed 505 F.2d 610, rehearing denied 508 F.2d 842, certiorari denied 96

S.Ct. 39, 423 U.S. 824, 46 L.Ed.2d 41, (D.C. Ala.1974), which holds,

"where a regulation promulgated by an administrative agency is designed to create important procedural rights, the agency must follow that reulation closely."

Respondants and Attorneys willfully, maliciously, in bad faith tampered with Physical Evidence, changed records,altered records, deleted, created, withheld, distroyed, distributed and disclosed Petitioners records without his written consent.

Dean Mobley's Affidavit reveals , she, Ms. Adams, Ms. Nelson conspired to deprive petitioner of equal oportunity and property rights (records) by willfully maliciously not grading to University Policy(see Mr. Prewitt's and Petitioners Affidavits).

Dr.Sayers, Dr.Crump, Attorneys Murphy and Goodwin conspired to induce (by LIEING) Petitioner (witness) into an illegal meeting where Dr. Crump and Attorney Goodwin Willfully, Maliciousily, In Bad Faith constantly and consistantly, illegally improperly

questioned Petitioner about Civil Matters. (see Mr. Patrick's and Petioner's Affidavit) Petitioners Records are his Property.

See, Buskey v. Town of Hanover, 577 A. 2d 406 (N.H.1990), states,

" Right to use ones own property is a fundamental right procted by both State and Federal Constitutions.

"Propety" in constitutional sense means not tangible property itself, but rather right to possess, use, enjoy and dispose of property.

Respondant Brief (R.Brief), p.5, LIES, 1st paragraph (par.) "...not Academic Grievances." R. Brief last par., p.5,"...petitioner submitted to Dean Mobley Academic Grievances ...".(see CR.412,573-578,598-601,615-648).

on September 14,1987,Petitioner filed 1st Academic Grievance with Dean Mobley. Whereas she stated that she didn't have the authority to handle because of the illegal activities Ms. Adams Demanded the Petitioner to Peform. Dean Mobley did nothing.

It was first revealed through Dean Mobley's Affidavit, that she conspired with Ms. Nelson and Ms. Adams to have a hearing without informing Petitioner, therfore deneying his right to present evidence, witnesses,records and the right to be present to represent my Due Process Rights.

see, Board of Dental Examiners v. King, 364 So.2d 319, which held,

"Right to fair hearing is destroryed if an agency bases its findings on matters not introduced into evidence".

Petitioner accompanied by Mark Wiener took the Academic Grievances as described, to V.P.Roger Sayers, (see Ex.2,3), University Wide Grievance Procedures, Section I,B,3rd sentence "Grievances concerning matters that are not within the jurisdiction of a particular Academic Division and grievances against the dividisional academic Dean must be resolved by the Vice resident of Academic Affairs". Petitioner told Dr. Sayers that Dean said she didn't have authority to handle

because of the Illegal Activities the Petioner (student) was demanded to perform. Dr. Sayers told Petitioner since you do not have grievance against the Dean then it goes back to Her.(se Ex.2, Mark Wiener's Affidavit and Petitioners). Dr. Sayers furnished no evidence in rebut.

Respondant's Brief p.3,2nd paragraph, 2nd sentence is a LIE insinuating Petitioner was placed on indefinite suspension in 1986 fall semester because of his academic performance in the fall.Petitioner passed all courses and promoted into the upper division of Nursing School. (see CR.656). LIE, Last sentence p3,"Petioner failed...he did not sit for the NLN. (see CR.515), Dean Awtreys Affidavit, reveals the NLN is not calculated into students grade. (see Petitioners Affidavits).(see CR.860), Affidavit Attorney Gordon filed in the court and willfully neglected to send Petitioner a copy. Dean Awtrey reveals Ms. Adams could not and did not grade Petitioner according to Policy.

Respondant Brief p.5, paragraph 2, is misleading whereas Petitioner and Mark Wiener met with Dr. Sayers, whereas he willfully neglected to abide by Regulations. LIE, p.7, par.3,2nd sentence "Petitioner said that when he heard from these agencies, he would contact Dr. Crump to discuss resumption of the Academic Grievance Procedures." This is a LIE supported by Petitioner's and Mr. Patricks Affidavit. Respondants Brief p.7,paragraph 2, LIE when says Dr. Crump and Attorney Goodwin asked Petitioner several questions to determine how he wanted his Academic Grievances handled. In no way nor at any time did they go over how the grievances were to be handled. (see Patricks and Petitioners Affidavits). The only questions Attorney Goodwin and Dr. Crump asked were about what harm Petitioner had suffered by not receiving records on time, a Civil Cause, illegal questioning without telling Student an attorney would be present to

question petitioner about Legal Matters.

It is a Moot Issue, Petitioners request to Dr. Crump for continuance, whereas Petitioner followed State's Due Process Procedure provided by Commission On Higher Education and filed Grievances in the Chancllors office against Dr.Crump, Attorney Goodwin, Dr. Sayers and President Thomas and all the other Academic Grievances filed

LIE, p.7, of Respondants Brief when stating the Academic Grievances were not grievances because not grade related. Page 8, is LIEING when stating Petitioner would contact Dr. Crump.(see Patricks and Petitioners Affidavits),Respondants Brief p.8, LIES, when implying not Academic Grievances p.9, LIE when stating Petitioner has no right to hearing. Proof there is no Due Process at the University of Alabama.

Respondants Brief p.9, Petitioner proved records were altered, destroyed, withheld, created, changed, disclosed, distribed and had substantial evidence that he was Discriminated against. (see Prewitt's and

Petitioners Affidavits). Page 8, of Respondants Brief, Lies when stating reply brief appeal did not concern non-academic grievances, whereas all grievances of Petitioners are Academic Grievances as stated above refering to Universitys Own Policies, Substantial Material Facts that the Respondants and Attorneys have constantly and consistantly LIED, at Will!

Respondants Brief p.10, is full of LIES.

Prewitts Affidavit, substantial Material Evidence, that Ms.Adams was Discriminately Cruel to Petitioner. Mr.Prewitt reveals he failed Nur.214 and he was not given the same equal treatment as Dean Awtry provided for the two female students who failed NUR 214, to take a home study course so the females could come back the next semester to they would remain with the same class. Petitioner was not given special treatment either,so he could return with the same class. Petitioner paid to take the NLN, and was unable to take test and asked for a chance to take a make up, but unlike the

females petitioner was denied his request. A female student was allowed to make the NLN. the only provisions Petitioner was given by Dean Awtry was if he felt he wasn't treated fairly he could file Academic Grievances. Mr. Prewitt reveals that after Petitioner filed his first Academic Grievance, Ms. Nelson approached Mr. Prewitt and encouraged him to reapply. Mr. Prewitt revealed that he and Petitioner were discriminately denied acess to use of Bed Lab numberous times whereas the female student were never shun nor avoided. Prewitt reveals tha Dean Awtry, Ms.Nelson and Ms.Adams lied in their Affidavits claiming a bed was not needed by the two Males, whereas all females had full acess to Bed Lab.

Ms.Adams lied at her deposition when she stated she saw Petitioner tear up a Medical Chart and claiming she took it to the Head Nurse. Bibb County Medical Center (BCMC), Attorney General of Alabama and Director of Alabama Board of Nursing was Subpoenaed to produce all records pertain-

ing to Petitioner. None produced the torn Medical chart nor a report of Petitioner destroying Medical Records, because Ms. Adams LIED, Willfully Slandered Petitioner at will. The fact is Ms.Adams instructed Petitioner to Illegally Destroy Medical Records, but Petitioner did not mention this in his Academic Grievance as he did of Ms. Adams Slandering him in Class whereas she created her first after the fact evaluation Countering her slandering Petitioner. Ms. Adams didn't write medical records destruction in her evauations, whereas Petitioner never mentioned her demanding this Illegal Act until her Deposition. See all Ms. Adams Created evaluations, she mentions reprimanded for siting on counter.Ms. Adams Instructed Petitioner to falify medical charts throughout his Clintical. Ms. Adams first created evaluation, she willfully omitted the 100% Petitioner made on his teaching project. Mr. Prewitt reveals Ms Adams stated she couldn't grade petit-

ioner fairly. Ms. Adams at Deposition Admitted she Destroyed Petitioners records. Final Exam was lost. Dean Mobley LIED to Petitioner numerous times, willfully violated Numerous Federal Protected Rights. Ms. Adams first fabercated evaluation was sent to Petitioner by Dean, whereas Attorney Goodwin noticed the date 1/22/88, withheld first evaluation, had other evaluations created by Marsha Adams and Janice Nelson, whereas Goodwin sent a letter to Petitioner stating he has sent all his educational records. LIE, supported by Overwhelming Material Facts (around 100 more pages of records after Law Suit Discovery and records are still withheld or Destroyed).

Janice Nelson willfully, maliciously intentionally created records, LIED, whereas some of created records After the Fact were produced through petitioner's Discovery Request #3, Records from University Office of Counsel. Also produced for #3,letters from the Governor

Attorneys Powell and Skidemore. Neither Attorney abided by the Governors orders nor did they contact Petitioner nor did they give him any records nor did they begin any grievance process.

Respondants Brief p.11, LIES when states "Petitioner's contentions are unfound in law and in fact. LIE! LIE p.12, "Petitioner does not here ...articulate any specific material facts...".p.12, stating"non-academic grievances(LIE) and the merits of the merits of the Academic Grievances as proof of the disputed material facts...points to nothing else. LIEE. Page 13, of respondants brief,LIES, failed to produce any evidence and LIES, p.13 Petitioner followed state procedure, filed grievances in Chancellors Office, Chancellor sent petioner letter telling him "not to treat as filing anything with university of Alabama." Whereas this includes the continuance request. Therefore Petitioner followed state policy and filed all

grievances and grievances against the Chancellor in the Chairmans office Gov. Hunt. Whereas the Governor never contacted Petioner about grievances, nor did he give Petitioner any records, therefore Petitioner Filed Academic Grievances against the Chairman Governor Hunt, nor did the Chairman contact Petitioner about continuance request, again a moot issue. Law Suit Discovery revealed letters to Attorneys Powell and Skidmore from the Governor Ordering them to produce Petitioners records and get his grievances started. Neither did as they were ordered. (see Ex. 21-30,40 also see complaint and exhibits) (see CR 992-1011, 1037-1045).. In April 1987, Dr. Asam and Petitioner went to Chancellors office to try to get grievances started without having the courts intervenge whereas Attorney Potts told Petitioner that he wasn't going to be intiminated whereas he had 37 suits against them now and 14 more Lawyers.

CONCLUSION

The Writ for Certioria should be granted as stated above and Merits Brief allowed to be writen, whereas there is is no Due Process In Alabama , when the University of Alabama is a Defendant, which is an extremely Political and Financial Powerful Institution.

James Davis Nelson, Jr.

James Davis Nelson, Jr.
Pro Se
321 23rd Street
Tuscaloosa, Alabama 35401

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Writ of Certiorari was sent to Mr. George Gordon, Office of Counsel The University of Alabama, P.O. Box 870106, Tuscaloosa, Alabama 35487 this 22 day of September, 1992.

James Davis Nelson Jr.